

2015 Arbitration Awards - Minnesota B.M.S.

December 14, 2015

Summary of Arbitration Awards listed on the Bureau of Mediation Services' web site (<http://www.mn.gov/admin/bms/arbitration/awards/>).

"Sustained" means the grievance prevails overturning the original action. "Denied" means the original action prevails.

December, 2015

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
15-PA-0870	ISD 728, Elk River AFSCME Council 5	Jeffrey Jacobs	Insurance premium	Federal ERRP program allowed ER to pay \$33/mo towards insurance. Barred from paying into HSA, HRA accounts?-no.	Sustained	Contract calls for reduction of premium, didn't exclude HSA,HRA. Not paid into accounts but on ee's check.
15-PA-0559	ISD 625, St. Paul AFSCME Council 5	Frank Kapsch	Bumping rights	Supervisor in another union was laid off & bumped an AFSCME ee from the position supervisor previously held.	Sustained	ER used civil service leave of absence rules to justify move. Specific contract language trumps civil service rules.

November, 2015

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
FMCS	Bay State Milling Company, Winona Bakery Workers Local 113G	Carol O'Toole	Pay for lower classification wk. Timeliness	OT on weekends doing clean up work was paid at the "utility" rate vs normal rate. Did grievance meet contract rules?	Sustained Timely	Weekend work did not entail layoff and bumping into a lower classification Issue not raised until the hearing.
15-PA-0509	ISD 200, Hastings Teamsters Local 320	James Abelsen	Termination	Night custodian suspected of smoking marijauna at work.	10 day susp.	Unfair & unjust. Long term ee. Drug policy favors progressive discipline, not zero tolerance.
???	Minneapolis, City of-Convention Cntr. Teamsters Local 320	Mario Bognanno	Termination	Careless handling of a moveable panel resulted in over \$2,000 damage.	1 month susp.	Long term ee, no priors. No backpay awarded. Ee must conduct reasonable job search to mitigate damages.
15-PA-0483	Newport, City of Law Enforcement Labor Services, Inc.	John O'Donnell	10 day suspension	Video of Officer going into City Admin. locked office w custodian who resigned. U challenged use of surveillance camera.	5 day susp.	5 day suspension given in a similar incident. MN Court of Appeals ruled - Exclusionary Rule limited to terminations.

September, 2015

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
14-PA-0986	Carver County MN Public Employees Association	Jeffrey Jacobs	Holiday Pay	Deputies seeking 4 hrs. holiday pay when not working as provided in expired MOU, but contrary to new contract. Can ER change schedule? - Yes.	Split	ER payed for 11 months in error - didn't create a practice, but couldn't correct error until new year. Reduce schedule on Hol. - mngmt right.
15-PA-0436	Lakeville, City of Law Enforcement Labor Services, Inc.	Rolland Toenges	Termination	Officer released active investigative info to media without authorization.	Denied	Violated state law & clear Dept. policy. Destroyed trust w other agencies.

15-PA-0798	ISD 94, Cloquet Education Minnesota Cloquet	James Lundberg	Lane Change	Masters from St. Scholastica on-line program denied due to courses for licensure which were already required.	Sustained	The school is an accredited institution. Superintendent's discretion is limited.
			Arbitrability	Lane changes denied for 5 yrs., but newest grievances met timelines.	Sustained	Denials not negotiated with union, viewed as individual agreements.
15-PA-0740	St. Paul, City of Tri-Council, Teamsters 120	Harry Crump	Termination	Street Maintenance truck driver under a Last Chance Agreement for accidents hit 4 cars with snow plow.	Denied	25 yr. ee. Union argued procedural error in accident review process, but process was fundamentally fair.
15-PA-0538	Wright County Wright County Deputies Association	Jay Fogelberg	Termination		60 day susp.	

August, 2015

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
15-PA-0799	Carlton County Teamsters Local 346	Charlotte Neigh	Medical Insurance for part-time ees	U unaware P.T. ees didn't receive insur. until ER offered MOU for insur. at same pro-rata level as other unions. U seeking full coverage.	Sustained	Contract lists part-time rate for other benefits, but no part-time limitation for insurance. Practice of never paying benefit doesn't trump language.
15-PA-0589	Clay County Law Enforcement Labor Services, Inc.	Richard Beens	K-9 assignment	Deputy with prior K-9 experience & seniority denied position.	Denied	Assignment, not a promotion. Seniority plays not role. Not arbitrable.
15-PA-0692	Cook County Law Enforcement Labor Services, Inc.	James Abelsen	Unit Seniority when not in Unit.	Appointed chief deputies given credit for time outside U. U opposed. ER-MN stat. 3.088 protects elected officials seniority.	Denied	Contract-"Continuous service record" with Co. not bargaining unit. Statute does not apply (appointed not elected).

July, 2015

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
15-PA-0386	ISD 314, Braham Braham Education Association	James Lundberg	Lane Change	Can credits earned before a Master's degree be applied to lane changes beyond Master's - yes.	Sustained	Contract does not specify the order in which credits are earned.
15-PA-0666	ISD 914, Ulen Ulen-Hitterdal Education Association	Anthony Orman	Denial of Master's Program	Approval for Masters in Educational Leadership degree denied to math teacher.	Denied.	Contractual requirement that advanced degree be germane to assignment.
FMCS	Kemp's LLC Teamsters Local 160	Joseph Daly	Past Practice	Does a shift starting at 11:00pm count for day it starts or day where majority of hours are worked? Suprv overrode pay system to credit day majority of hrs worked.	Sustained	OT implications. Practice in place for 2 yrs before discovered-no other ees treated this way, but company is responsible for acts of its agents.
FMCS	People's Energy Cooperative IBEW Local 949	Steven Befort	Unilateral Changes	Restructuring due to expanded territory. Was it an unfair labor practice telling temp workers they might not be hired if plan not approved?-no not a promise nor threat.	Split	Can't use residency as qualification for promotion to evade contract language. Standby territories allowed if don't skew OT.- challenge not foreclosed.
15-PA-0088	St. Cloud, City of Law Enforcement Labor Services, Inc.	Richard Beens	2 day suspension	Officer improperly handled a robbery. Didn't notify suprv., or forward for invest.	Denied	Proper progressive discipline. 2 prior written reprimands.

15-PA-0148	Wright County Teamsters Local 320	Jeffrey Jacobs	Termination	Correction's Sgt fraternizing w inmate within 1 yr of release & using cell phone in jail both in violation of policies.	Written Reprimand	1 yr fraternization bar does not apply if friendship predated incarceration. Cell phone was 1st discipline- written reprmd.
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June, 2015

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
15-Pn-0251	Brooklyn Park, City of AFSCME Minnesota Council 5	Stephen Befort	Interest	1st contract P.T. FF. 2 yrs.-u (e-1yr); Wages-u (e seeking steps based on hrs vs yrs.); U & ER Security-u; Out of class pay-u; Certifications-u; Seniority-e; Call Back-e; Hol.-e; Residency-e; Discipline and Work Schedules-split.	2016 - 2.5%	Wages same as full time. ER seeking steps based on hrs. vs yrs.-awarded yrs., but longer than u request. U seeking Insurance, Severance, Sick, IOD, Light Duty, Jury Duty & Bereavement-awarded if ees work 20 hrs/wk. (ER policy).
14-PN-0350	Carlton County (Interest Award) Law Enforcement Labor Services, Inc.	Richard Miller	Interest	Sheriff's Supervisory - 1st contract. Wages:'13-1.75%-e(u-4%),'14-2.25%-e(u-4%), '15-4%-e&u agreed.	2013 - 1.75% 2014 - 2.25% 2015 - 4.0%	Wages internal pattern. U seeking to increase differential (5.28%) v deputies. ER conducting mrkt study-"wait for study"
15-PA-0457	ISD 196, Rosemount, Apple Valley, Eagan Support Staff Association of ISD 196	Andrew Roberts	5 day suspenson	Custodian brought dog to work. Confronted co-worker who reported her. Took sick day when scheduled to meet suprvr.	1 day susp.	No clear rule about dogs in school. Went to clinic on sick day. 1 day for retaliating against co-worker.
15-PA-0435	ISD 278, Orono School Service Employees Local 284	Joe Daly	Qualifications vs Seniority Timeliness	Maintenance Tech position given to external applicant. Did timeline start when denied position?	Denied Sustained	Not qualified. Mngmt has right "to define the job duties required". Started once position filled.
15-PA-0170	Mille Lacs County AFSCME Minnesota Council 65	Steven Befort	Unpaid Leave while campaigning	Asst. Co. Attorney placed on unpaid leave while a candidate for Co Attorney. Personnel Board found a conflict of interest.	Denied	U argument is an attack on PBA/Co Board hearing process. Should have appealed to MN Court of Appeals.
14-PA-0808	MN Judicial Branch, Third District AFSCME Minnesota Council 65	Harley Ogata	Termination	Court clerk made 1,400 inappropriate DVS look ups. Only 2 of 26 ees had no look ups. 8 disciplined-3 highest abusers terminated.	15 day susp.	Discipline intended to be corrective, not punitive. Only 1 violation after memo re policy. Arb.Neigh reduced 1 termination to 10 day suspension, see Dec. 2014.
FMCS	North Memorial Medical Center Minnesota Nurses Association	Steven Befort	Attendance Policy	ER unilaterally adopted new attendance guidelines regarding use of sick leave.	Sustained	Contract bars discipline based solely on number of days used.
15-PA-0343	Spirit Mountain Recreation Authority AFSCME Minnesota Council 5	James Abelsen	Recall from Layoff	Recalled ees paid at rate of position they were filling vs their regular rate.	Denied	Contract calls for pay in job range close to regular pay. New position only 1 rate.

May, 2015

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
15-PA-0009	ISD 152, Moorhead Education Moorhead	Paul Gordon	Tentative Agreement	Signed TA not placed into CBA. Union failed to review draft contract.	Denied	A TA does not become part of the CBA unless it is adopted into the CBA itself.
???	Metropolitan Airports Commission Individual Grievant - V.P.	Frank Kapsch	Termination - V.P.	Sgt engaged in inappropriate relations w female subordinate. Continued texting when asked to stop & lied during investigation.	1yr. Demotion	Investigation incomplete and flawed. 525 texts between parties before she asked him to stop texting.

14-PA-1085	Metropolitan Council Teamsters Local 320	Jeffrey Jacobs	80 hr. suspension	Officer punched handcuffed prisoner who spit at him.	Denied	Excessive use of force. Prisoner's head hit concrete - ended up in hospital.
???	MN State Colleges & Universities MN State College Faculty Union	Gerald Wallin	Termination	St. Paul College carpentry instructor did not meet Sabbatical leave requirements.	Denied	Changed plan w/o approval. Did not finish course work. No prior discipline.
15-HA-0560	Regions Hospital AFSCME Minnesota Council 5	Jeffery Jacobs	Termination	Medical assistant ordering drugs for the hospital, signed forms as a registered pharmacist.	Reinstated w/o backpay (7 months).	Long term employee, exceptional work record. Forms filled out at direction of her supervisor. No personal gain.
???	St. Paul, City of AFSCME Council 5	Jeff Jacobs	Termination	City code inspector used computer restricted to inspectors to influence an enforcement action on her property.	2 day susp.	No specific rule prohibiting action. Case remained open, computer id'ed her as person entering comments-she admitted.

April, 2015

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
15-PA-0039	Anoka County Law Enforcement Labor Services, Inc.	Eugene Jensen	Termination	Deputy pled to gross misdemeanor stalking of a female deputy.	Denied	Return to work would violate mission of ER to preserve the public trust.
15-PA-0491	Duluth, City of Firefighters Local 101	George Latimer	Unilateral change to health insurance	Insurance is self funded. ER payed ees to opt out contrary to contract thereby saving ER monthly contributions to fund.	Split	ER ordered to pay fund amount tied to fire opt outs, but not amount fund lost due to other union's opt outs.
15-PN-0011	Hennepin County (Interest Award) Hennepin Co. Sheriff's Suprv. Assn.	Harry Crump	Interest	Wages-2014 & 2015-2.5%, 2.5%-e u-2.5% +1% to top each year); Holiday pay - n-e.	2014 - 2.5% 2015 - 2.5%	Wages-pattern. Deputies 2.5%+1% due to double digit turnover-valid reason for exceeding pattern. No suprv get Hol pay.
15-PA-0201	Lake City, City of Law Enforcement Labor Services, Inc.	John Remington	Overtime if using PTO	Officers denied OT due to using Paid Time Off. Does PTO = hrs. worked?	Sustained	PTO can't be considered hours worked, but is part of the normal schedule & OT in excess of normal schedule awarded.
???	MN Employment & Economic Dvlmnt. MN Association of Professional Ees	Stephen Befort	Termination	Job Counselor did Spanish to English translations for Crystal Sugar at work.	10 day susp.	16 yr. ee with good work record. Only 23 emails during 2 yrs. Previous suprv. gave okay, & he wasn't paid for work.
???	Minnesota, State of, Human Services MN Assoc. of Professional Employees	Sharon Imes	Termination	Sexual harassment. Showed sexually explicit picture to female co-worker; continued asking her to lunch after she said no; overly friendly & flirty.	1 week susp.	Unwelcome actions did not amount to sexual harassment. Failed to consider good work record. Inappropriate use of computer & showing photo=1week susp.
14-PN-0916	Wabasha County (Interest Award) Teamsters Local 320	George Latimer	Interest	Deputies. Wages: '14 - 4.84% (1.5%+ 3.34% mkt adj.)-u (e-1.5%), '15 - 2%-e (u-3%), '16 - 2.5%-e (u-3%). Shift Diff \$.55-u (e-offered if receipts for uniforms); Comp bank from 120 to 150 hrs.-n-e. Court Cancel fee-n-e; IOD from 3 to 6m-n-e. Increase travel food allowance-n-e; Receipts for uniform allowance-n-u.	2014 - 4.84% 2015 - 2% 2016 - 2.5%	Wages-'14 external market, '15&'16 - internal pattern. Shift Diff.- same as jail & dispatch. Retro despite ER claim they can't compile necessary records. Comp bank-internal & external. Court cancellation fee-no compelling reason/ IOD- external average. Food & Uniform no compelling reason for change.
15-PA-0314	Winona, City of Law Enforcement Labor Services, Inc.	Richard Dunn	Termination	Police officer charged with DWI, lost his license for 60 days.	Denied	City has consistently followed policy to terminate if license is lost for 60 days.

March, 2015

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
14-PN-1233	Anoka County Law Enforcement Labor Services, Inc.	James Laumeyer	Interest	Dispatchers. U-change merit pay plan to longevity plan-n-e; Wages-0%,0%-e (u-4%,4%); Merit-3%,3%-u (e-0%,2%); Shift leader 5%-u (e-3%); 3.5 hours required for shift lead pay-e (u-all hours); Seniority bidding-n-e; Paid lunch-n-e	2014 - 0% 2015 - 0%	Radical action should be negotiated. Wages-internal pattern & mkt ranking. Merit-dire internal inequity & malfunction of merit pay re movement. Shift leader-current practice. Seniority/Lunch-efficient & effective operations favor ER position.
15-PA-0248	Clearwater County Minnesota Nurses Association	Harley Ogata	Step advances w/o time in grade	Nurse hired at 3 yr. pay step based on experience. U-experience should be added to service time for pay advancement.	Sustained	ER considered gap between 10yr step and 15yrs as a longevity step requiring actual service. But no contract language.
15-PA-0250	ISD 534, Stewartville Stewartville United Educators, Ed MN.	Jeffrey Jacobs	Overload Pay	Teachers assigned 6th class with no overload pay.	Sustained	Overload awarded due to extra work and loss of prep time.
			Timeliness	Does timeline begin at notice of change or date of change? - Date of change.	Sustained	Discussion why arbitrators hold date of change is event giving rise to grievance.
15-PA-0362	Sherburne County Law Enforcement Labor Services, Inc.	Ogata, Harley	Demotion	Sergeant failed to remove his firearm before entering booking area. Initially 1 day susp considered, but after looking at performance reviews he was demoted.	1 day susp.	If performance issues were significant enough to cause a demotion, he should have been place on notice that they could lead to demotion.

February, 2015

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
14-PN-1018	Crow Wing County (Interest Award) Law Enforcement Labor Services, Inc.	Miller, Richard	Interest	Corrections. 2 yrs.-e (u-3y); Wages-0% w steps each yr-e (u-3.5%+steps per y). Those at top no step but 3.5% each yr. Longevity- n-e (u seeking new benefit).	2014 - 0% 2015 - 0%	Duration-intrnl. Wages based on pay for performnc cost-no external wage pattern. 3.5% for those at top due to no access to step. Longevity-no compelling reason.
14-PN-1127	Crow Wing County (Interest Award) Law Enforcement Labor Services Inc.	Rolland Toenges	Interest	Deputies. Duration-3y-u (e-2y); Wages-u (u seeking 3% each yr w steps;E-0% each year w steps). 7 of 11 units on pay for performance vs steps.	2014 - 2.5% 2015 - 2.44% 2016 - 2.33%	Duration - already in middle of 2nd year. Wages-ER positon is major departure. Discusses performance vs steps & turnover gain. Wages=Internal cost avg.
13-PA-0735	Hennepin County Teamsters Local 320	John Johnson	2 shift suspension	Juvenile Corr. Officer refused to let disruptive juvenile use bathroom facilities.	1 shift susp.	Went to bathroom twice within 1 hr. but denied 3rd request 20m later. Discipline for failing to de-escalate situation.
14-PA-0630	Minnesota Dept. of Human Services AFSCME Minnesota Council 5	A. Ray McCoy	Termination	Human Services tech failed to notify ER that her DL was suspended.	Denied	Driving is a basic job duty. Contract requires immediate notification on limits.

January, 2015

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
14-PA-1237	Austin, City of UAW Local 867	David Biggar	Job Bidding	Water Maintenance Tech added to CBA. Req. Master Electrician lic. U believes lic. moves w ee - senior ee w/o lic.tried to bump.	Denied	U based grievance on answers to quest. raised during neg. ER clarified position prior to vote. No contract language.

14-HN-0839	Cook County Hospital (Interest Award) Minnesota Nurses Association	Janice Frankman	Interest	Wages: '14-3%-u, '15-2%-u (ER wanted to reclassify nurses. Hospital nurses 1.75% each yr. all others .75% each yr.). Insurance retain 85/15 split-u (ER 80/20); Discretionary leave-n-ER; Longevity-n-ER.	2014 - 3% 2015 - 2%	Wages-external pattern & ER's proposal required creation of new classifications. Insurance-internal pattern. Leave - no compelling reason. Longevity-should be dealt with at bargaining table.
14-PA-0861	Duluth, City of AFSCME MN Council 5	Jeffrey Jacobs	Call Out Overtime	U challenged city's right to use stand-by crews for sewer emergencies vs most senior sewer workers.	Denied	U cited past practice, but both contract & policy changed. 3 arbitrations on same issue. Collateral Estoppel argued by city.
14-PA-0860	Duluth City of AFSCME MN Council 5	Carol Berg O'Toole	Call Out Overtime	Same issue as in Boyer & Jacobs arbitrations.	Denied	Contract issues the same. Grievants have different seniority.
15-PA-0058	ISD 709, Duluth AFSCME MN Council 5	James Lundberg	Insurance - eligibility change.	Paras have me too Insurance language w teachers. PIEP changed eligibility from 20 to 24 hrs. Teachers accepted.	Sustained	Me too applies to coverage & premiums. Unilateral eligibility change not allowed.
FMCS	Mayo Clinic, d/b/a St. Mary's Hospital SEIU Healthcare Minnesota	Richard Beens	Short Term Disability Benefit	ER unilaterally increased waiting period 10 to 40 hrs. based on "me too" language.	Denied	Clear contract language and past practice that was not grieved.
13-PA-0564	MN Department of Corrections AFSCME Council 5	Thomas Yaeger	3 day suspension	Gave prisoner info on impending writs. & signed inaccurate time cards.	Denied	Transfer information raises security issues. Timecards = fraud.
13-PA-0823			10 day suspension	Failed to report prisoner's threats.		Progressive discp. Re boundary issues.
14-PA-0266			Termination	Showed prisoners restricted payroll data & talked re investigation when warned not to.		Termination only 3 months after being disciplined for similar boundary issues.
14-PA-0766	Minnesota, First Judicial Branch Teamsters Local 320	John Johnson	Termination	Absences, tardiness, failure to provide FMLA data within 15 days; performance. ER would not have moved to terminate if FMLA was timely received.	Sustained No backpay.	Performance not mentioned in notice of Intent to discipline-so not allowed. Confusion over FMLA filing undercut ER's case which focused on FMLA.
FMCS	Mortenson Masonry, Inc. Bricklayers & Allied Craftworkers, Local	Thomas Gallagher	Double-breasting	Employer maintained 2 companies. 1 union & 1 non-union doing masonry work.	Sustained	Ordered to pay union wages for all work done by the non-union company.
FMCS	Office & Professional Empl Local 12 United Steelworkers District 11	Eugene Jensen	Termination	Union BA injured in off-duty accident failed to return Union equipment, or provide requested info re return after leave expired.	Denied	ER considered this abandonment of job. Ruled a termination with just cause.
FMCS	3M Company United Steelworkers Local 11-418	Mario Bognanno	Layoffs due to Weather	Ees sent home & not given chance to bump less senior ees when natural gas curtailed to plant due to weather.	Split	1st event-an emergency-denied. 2nd should have been planned for-sustained. Explained requirements for past practice.
14-PA-0411	University of Minnesota AFSCME Minnesota Council 5	A. Ray McCoy	10 day suspension	Legal secretary violated the retention policy when she destroyed a file	Denied	Prior discipline and no evidence she attempted to correct poor performance.